IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.151 OF 2004

Jayrambhai Bhalabhai Desai. .. Petitioner
(Org.Deft.No.1)

Vs.

Narendra Jagjeevandas Mestri
& Anr. .. Respondents
(Org.Plaintiffs)

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S/Shri Atul Kumar Kamble and Aniket Kamble for the petitioner.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 5th NOVEMBER, 2004.

P.C.

1. Heard the learned advocate for the petitioner. The petitioner challenges the order dated 2nd September, 2004 passed by the Civil Judge, Senior Division, Panvel, in Special Civil suit No.55 of 2002 whereby the trial Court has allowed the application for amendment filed by the respondents-plaintiffs. The impugned order apparently discloses that the amendment has been allowed in view of the subsequent events which have occurred after lodging of the complaint inasmuch as that the proposed amendment relates to the facts alleged in answer to the certain

facts stated by the defendant No.1 in the written statement, and the necessity of joining some other party to the proceedings in order to enable the Court to pass an effective order in the matter. The impugned order is sought to be challenged on the ground that the respondents/plaintiffs are not entitled to seek relief by relying upon the oral evidence contrary to the documentary evidence in the form of lease or license agreement between the parties and in view of the provisions of Sections 91 and 92 of the Evidence Act. The reliance is sought to be placed in the decisions of the Apex Court in **Vashu Deo v. Bal Kishan,** reported in 2002(2) SBR 90 and of the learned Single Judge of this Court in the matter of **Kashinath s/o.Laxmanrao Ghate v. Kisan s/o. Ramaji Khanke,** reported in 2004(1) ALL MR 773. The decision of the Apex Court is on the point where the relationship of parties is governed by rent law, a sub-tenant cannot directly attorn to the landlord unless landlord's suit against tenant is decreed and the decree has achieved finality. The decision of the learned Single Judge in **Kashinath Ghate's case (supra)** is in relation to the scope and the applicability of Section 116 of the Evidence Act to the facts of the case before the Court in Kashinath's case. Both the judgments are not in relation to the provisions of law

comprised under Order 6 Rule 17 of the Code of Civil Procedure, or the matters which are required to be dealt with under the said provisions of law.

2. Perusal of the impugned order discloses that the Court below after having considered the proposed amendment to be necessary to decide the real question of controversy, has allowed the application for amendment to the plaint. The petitioner has not been able to point out how the proposed amendment is irrelevant, improper and unjust in the matter. Once it is apparent that the amendment which is proposed in the plaint is consequent to the certain facts disclosed by the defendant in the written statement and such amendment is necessary for the effective disposal of the suit, the same cannot be said to have been allowed in improper exercise of discretion by the trial Court in the matter.

3. Since the impugned order does not disclose any jurisdictional error as such, there is no case for interference in the impugned order under Order 6 Rule 17 of the Code of Civil Procedure, and therefore, the Civil Revision Application is rejected.